

STAFF REPORT

File Number	RA 03-002 (Appeal)
Application Type	Reasonable Accommodation Request
Council District	4
Planning Area	Alum Rock
Assessor's Parcel Number(s)	592-03-007

PROJECT DESCRIPTION: Completed by: Mike Mena

Location: Northeast corner of Kirk Glen Drive and Mabury Road (704 Kirk Glen Drive)

Gross Acreage: 0.13 Net Acreage: 0.13 Net Density: N/A

Existing Zoning: R-1-8 Single-Family Residence District Existing Use: Single-Family Residence

Proposed Zoning: No Change Proposed Use: Sober Living Environment for a total of (12) residents

GENERAL PLAN Completed by: MM

Land Use/Transportation Diagram Designation Medium Low Density Residential (8.0 DU/AC)	Project Conformance: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> See Analysis and Recommendations
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SURROUNDING LAND USES AND ZONING Completed by: MM

North: Single-Family Detached Residential	R-1-8 Single-Family Residence District
East: Single-Family Detached Residential	R-1-8 Single-Family Residence District
South: Single-Family Detached Residential	R-1-8 Single-Family Residence District
West: Single-Family Detached Residential	R-1-8 Single-Family Residence District

ENVIRONMENTAL STATUS Completed by: MM

<input type="checkbox"/> Environmental Impact Report found complete	<input checked="" type="checkbox"/> Exempt
<input type="checkbox"/> Negative Declaration circulated on	<input type="checkbox"/> Environmental Review Incomplete
<input type="checkbox"/> Negative Declaration adopted on	

FILE HISTORY Completed by: MM

Annexation Title: McKee No. 13 Date: September 25, 1967

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

<input type="checkbox"/> Approval	Date: _____	Approved by: _____
<input type="checkbox"/> Approval with Conditions		<input checked="" type="checkbox"/> Action
X Uphold Director's Decision		<input type="checkbox"/> Recommendation

APPLICANT/CONTACT	OWNER
Nestor Constantino 2219 Best Court San Jose, CA 95133 (408) 449-0614	Evangeline Duque 704 Kirk Glen Drive San Jose, CA 95133

 PUBLIC AGENCY COMMENTS RECEIVED

Completed by:

Department of Public Works

No comments.

Other Departments and Agencies

No comments.

 GENERAL CORRESPONDENCE

Copy of Appeal, Letter from neighbor in Response to Appeal and all other prior correspondence.

 ANALYSIS AND RECOMMENDATIONS

BACKGROUND

This is an appeal of the Director's decision to grant a Request for Reasonable Accommodation from Section 20.24.020 of the San Jose Municipal Code to allow the use of a single-family house as a Sober Living Environment for up to 12 residents including 1 resident staff. The facility is intended as a place of residence for persons in recovery from alcoholism addiction and chemical dependency. Title 20 limits permitted uses in the subject R-1-8 Residence Zoning District to single-family residential uses and to residential care or service facilities for six or fewer persons with one or two resident staff as provided under state law.

The subject 0.13-gross-acre site at 704 Kirk Glen Drive is located in a single-family detached residential neighborhood. The facility is a single-story, approximately 2,084 square-foot structure containing four bedrooms, two and a half bathrooms, a living room, a family room, a kitchen, and a dining room. The site is surrounded by single-family detached residential uses on all sides.

On November 26, 2003, the Director of Planning issued a "Proposed Determination for Reasonable Accommodation" for a total of 12 residents, (11 residents and 1 one live-in resident staff) for the subject property. On November 28, 2003, a resident of the neighborhood the project site requested a public hearing on the Request for Reasonable Accommodation.

The Director of Planning received additional public comment at the February 11, 2004, Director's Hearing. Several area residents spoke in opposition to the request, expressing concern regarding neighborhood safety, overcrowding of individuals within the household, lack of facilities and open space, the lack of adequate parking, occupant smoking habits and effects of second hand smoke, potential neighborhood 'incidents' caused by the residents at the subject site, and the erosion of quality of life. Nestor Constantino, the applicant, responded to neighborhood comments and concerns and answered questions posed by the Hearing Officer.

On February 13, 2004, the Director of Planning issued a Final Director's Decision granting Reasonable Accommodation to allow a total of (12) residents, which includes eleven (11) residents and one (1) live-in resident staff. This determination was based in part on the applicant's agreement to limit the number of licensed

drivers to 5 in order to address the neighborhood concerns regarding the lack of parking in the neighborhood.

Michael Bryant, neighboring property owner, filed an Appeal of the Director's Final Decision on March 9, 2004. A copy of the appeal letter and all other prior correspondence is attached to this report. The stated grounds for the appeal are that staff has not adequately reviewed all of the necessary factors to be considered stipulated by the San Jose Municipal Code, over abundance of available space in similar facilities today, and that the transient nature of the facility does not appear to be in keeping with the traditional use of a single-family dwelling.

ENVIRONMENTAL REVIEW

The Director of Planning, Building and Code Enforcement has determined that this project is exempt from further environmental review pursuant to the California Environmental Quality Act since the proposal involves only a minor expansion of an existing facility or use.

GENERAL PLAN CONFORMANCE

The proposed request for Reasonable Accommodation for a clean and sober living environment is consistent with the San Jose 2020 General Plan Land Use/Transportation Diagram designation of Medium Low Density Residential (8.0 DU/AC) in that no expansion of the existing structure or increase in the number of dwelling units is proposed, the proposal is consistent with the requirements of the Housing and Building Codes, and the facility will operate as single-housekeeping unit.

ANALYSIS

Unlike many decisions made by the City affecting the use of private property, the granting of Requests for Reasonable Accommodation is not equivalent to a discretionary land use permit. Several State and Federal laws that limit the discretionary powers of local municipalities with regard to reasonable accommodations from land use requirements in order to make housing opportunities available to disabled persons. The analysis section of this report provides an overview of the regulations and relevant City ordinances and policies that provide the basis for decisions on these matters.

The applicant has indicated that he intends to get certification from the District Attorney's Office for court referred cliental. Discussions with Jodie Thomas of the DA's Office has indicated that the application for certification is currently under review and does not meet the minimum standards for certification at this time. Should the facility not qualify for certification by the DA's Office, residents of the facility would be relocating from voluntary recovery treatment programs.

A Sober Living Environment is not currently required to obtain a license in California unless they offer licensable elements such as counseling. If the facility wishes to provide counseling and other alcohol and drug services, then a license is required from the California State Department of Alcohol and Drug Programs. The current request is only for a group living environment that is alcohol and drug free. Additional uses would require additional discretionary review and approval by the City.

Overview of Laws Pertaining to Requests for Reasonable Accommodation

Federal Fair Housing Act. The Federal Fair Housing Act Amendments, adopted in 1988, prohibit housing discrimination based upon disabilities or handicaps. Recovering drug addicts and alcoholics are specifically included in the definition of “handicapped” under this law. Most residents of Residential Care Facilities and Residential Service Facilities fall within the protection of these laws. These laws drastically limit the ability of cities to use their discretionary land use authority to regulate group living arrangements involving disabled persons. Both federal and state laws expressly make it unlawful to discriminate through public or private land use practices, decisions, and authorizations. Discrimination includes restrictive covenants, zoning laws, denials of use permits, and other actions that make housing opportunities unavailable. Under the Federal Fair Housing Act, local governments are required to make "reasonable accommodation" to the needs of persons with disabilities in the application of its policies, procedures and regulations.

Proposition 36. Proposition 36, also known as “The Substance Abuse and Crime Prevention Act”, was passed by 61% of California voters on November 7, 2000 and became effective on July 1, 2001. The intent of this initiative is to divert first- and second-time non-violent defendants, probationary and paroled individuals charged with simple drug possession or drug use offenses from incarceration by requiring residency in community-based substance abuse treatment programs. The passing of this initiative has created the need for sober living environments (SLEs) on a statewide basis and has increased the number of Requests for Reasonable Accommodation in San Jose.

Group Home Ordinance. In 1998, the City Council adopted the “Group Home Ordinance” in order to bring the San Jose Municipal Code into compliance with federal and state legislation, which requires that local zoning regulations not discriminate against persons with disabilities. Section 20.160.010 of the Zoning Code states that it is the policy of the City of San Jose to provide reasonable accommodation for persons with disabilities seeking fair access to housing in the application of its zoning laws, policies, and process. The principle of reasonable accommodation is an explicit requirement of the Federal Fair Housing Act.

The Zoning Code establishes the procedures for making a determination about the reasonableness of a requested accommodation and identifies the specific factors that must be considered prior to granting an accommodation.

Santa Clara County Alcohol & Drug Residential Facilities Certification. As a result of the passage of Proposition 36, facilities such as that requested in the current application are required to obtain approval from the District Attorney’s (DA) Office under the Santa Clara County Alcohol & Drug Residential Facilities Certification Program. Under County certification, the DA’s Office is responsible to monitor operation of the facility in order to assure compliance with applicable laws. The applicant(s) has indicated that an application has been filed with the DA’s Office for facility certification, which is under review by the District Attorney’s Office for 11 clients and 1 live-in staff.

Jodie Thomas of the District Attorney’s Office indicated that the application for a certified facility is not complete and is still under review at this time. Should the site not be certified for court referral cliental, an individual’s residence at the subject location would be on a voluntary basis only.

Staff Response to Appeal of the Reasonable Accommodation Decision

The appellant's basis for the subject appeal is generally on the grounds that City staff has not adequately reviewed and considered all of the necessary factors to be considered for reasonable accommodation under Title 20 of the Municipal Code. The appellant also expresses concern regarding the lack of benefit of the public input process for review of Reasonable Accommodation requests, and comments that residents of a Sober Living Environment would typically be more "transient" than other potential residents of a single-family dwelling. Staff acknowledges that the City's review and discretionary land use power is limited by State and Federal laws described above with regard to Reasonable Accommodation, and as the Accommodation is not a land use permit, conditions to more directly respond to public input cannot be attached. Sober Living Environments with residents who stay generally between three to six months, are determined to be single housekeeping units, and staff's review and analysis is limited to assessment of eight factors related to factual characteristics only.

Since the appeal letter questions the adequacy or appropriateness of "considerations" that were identified in the Director's Final Determination of Reasonable Accommodation, this section of the report assesses the "eight consideration factors" (summarized below) for approval with reference to excerpts or summaries from the appeal letter that are relevant to each factor as appropriate. A complete copy of the letter of appeal is also attached.

Title 20 Requirements. Requests for Reasonable Accommodation are not Land Use permits and cannot be subject to conditions such as those included in Conditional Use Permits or other discretionary land use permits. For this reason, the Zoning Ordinance requires the "consideration" of certain factors rather than the making of specific findings before the granting of a request for reasonable accommodation.

The Zoning Code specifies consideration of the eight (8) factors noted below the factual basis for a decision regarding reasonable accommodation, and to provide a basic test for "reasonableness." These factors are to be considered on a case-by-case basis prior to the granting of a Request for Reasonable Accommodation:

1. Special needs created by the disability.
2. Potential benefit to the residents that can be accommodated by the requested modification.
3. Potential impact on surrounding uses.
4. Physical attributes of the property and structure.
5. Alternative accommodations, which may provide an equivalent level of benefit to the applicant.
6. In the case of a determination involving a single-family dwelling, whether the household would be considered a single housekeeping unit if it were not using special services that are required because of the disabilities of the residents.
7. Whether the requested accommodation would impose an undue financial or administrative burden on the City.
8. Whether the requested accommodation would require a fundamental alteration in the nature of a City program.

Analysis of Factors

Factors 1 & 2: Special Needs and Benefits of the Accommodation

The appellant indicates that the “potential” benefit that can be accomplished by the requested modification is a factor in question. Based on the passage of Proposition 36, the voters of California have mandated the diversion of first- and second-time non-violent defendants, probationary and paroled individuals charged with simple drug possession or drug use offenses from incarceration by requiring residency into community-based substance abuse treatment programs. Such eligible individuals are required to participate by residing at such facilities for periods up to about six months in order to achieve successful rehabilitation. The Director of Planning, Building and Code Enforcement has determined that there is the need for such facilities, in order to provide supervised, short-term residential environments to comply with the mandate. Coupled with the fact that the Fair Housing Act recognizes that such individuals are determined to be “disabled”, the Director can adequately deem that appropriate consideration has been made in that special needs are created by the disability. Further, there is a benefit to the residents that would benefit by the granting of the accommodation by providing a housing opportunity that might otherwise not be as available or affordable. Persons recovering from substance abuse receive benefits from living together because residing together in groups is therapeutic, supportive, and the only way some people in recovery can reside in a single-family house and neighborhood. Providing Sober Living Environments at locations throughout the City is a benefit for this group of “disabled” individuals.

Factor 3: Potential Impact on Surrounding Uses.

The appellant does not provide specific information about anticipated impacts to surrounding residences. The appellant notes that there is not yet a Sober Living Environment on the site for even the six residents allowed by right. The applicant is proposing to open a facility with the 11 residents and one resident staff person allowed under the Reasonable Accommodation. In this case, the Director has determined that the project is not expected to result in parking impacts. The subject property can physically accommodate two parked cars in the existing attached garage, two cars on the driveway apron, and one car along the curb in front of the subject residence. The applicant has proposed to maintain the garage so that it is available for parking at all times and limit the number of licensed drivers at the facility to five, to ensure that parking does not impact adjacent uses. Because of the nature of the proposed occupancy, many of the potential residents will not be able to drive, due to either the suspension of driver’s licenses or inability to afford a private vehicle. The applicant has stated that the proposed restriction of occupancy to no more than five (5) licensed drivers is feasible and does not pose any undue hardship.

Factor 4: Physical Attributes of the Property and Structure

The appellant comments that compliance with housing codes should not be used as the basis of an approval for this type of facility, and does not require public input to determine. As one of the considerations, the Director must consider the physical attributes of the property and structure to make a determination regarding the appropriateness of a facility for the number of requested residents. The City’s Housing Codes and the Uniform Building Codes identify the maximum number of occupants a

residential structure may accommodate based on square footage. Based on a review of the project's floor plan and room size calculations provided by the applicant, the subject house can accommodate a maximum of 12 residents. Section 17.20.270 of the San José Municipal Code and Section 503.2 of the Uniform Building Code, 1994 edition, establish as minimum square footage requirements (excluding closets) 70 square feet of sleeping area for two persons, 120 square feet of sleeping area for three persons; 170 square feet of sleeping area for four persons and an additional 50 square feet of sleeping area is required for each additional person. The subject property includes four (4) bedrooms consisting of 170-, 132-, 110-, and 121-square feet.

The Housing Codes do not identify specific size requirements for the size of non-bedroom areas, but the subject house has a number of rooms for general living uses to accommodate 12 people, albeit perhaps not comfortably all at the same time in any single room. The residence also has separate kitchen/dining area; two bathrooms in the home provide facilities for 6 persons per bathroom.

The City's Guidelines for Review of Requests for Reasonable Accommodation allows the City to deny a Request for Reasonable Accommodation if it is determined that the building or additions were constructed without benefit of permit. The subject application was referred to the Building Division and the Fire Department and no current code violations were found for the subject site. The relationship between the proposed number of residents and physical space of the house is not dissimilar to a large family. While the residence may not be "spacious", the above analysis concludes that the required minimum standards would be met by this proposal.

Factor 5: Alternative accommodations that may provide an equivalent level of benefit to the applicant.

The appellant has indicated that he believes there is currently an over abundance of available space in other Sober Living Environment facilities in the City of San Jose. Staff's evaluation of the subject application does not involve market demand or availability of spaces in other such facilities, but is based on the fact that the proposed request for accommodation complies with the housing codes and provides adequate parking to avoid impacts to adjacent properties, and will provide a suitable alternative living environment for persons with the disability of prior addiction to drugs or alcohol. Discrimination under the Fair Housing Act and Americans with Disabilities Act includes failure to make "reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to allow such persons, equal opportunity to use and enjoy the dwelling". Staff does not monitor current demand levels for such facilities and is not charged to consider the probable economic viability of a facility in the assessment to grant Reasonable Accommodation. Staff believes that, similarly to review of other new housing developments in the City, providing a range of different facilities, which can be found to comport with these factors throughout the City is in keeping with the goal of providing equal opportunity to this group with disabilities under the Fair Housing Act.

Factor 6: In the case of a determination involving a single-family dwelling, whether the household would be considered a single housekeeping unit if it were not using special services that are required because of the disabilities of the residents.

The appellant has disputed in the appeal that the facility would be in keeping with the nature or traditional use of a single-family dwelling. Staff's evaluation has determined that under the proposed Accommodation, no physical modifications to the house are proposed in a manner that would alter its physical function as a single-

family house capable of supporting a living arrangement other than a single-housekeeping unit as defined by the San Jose Municipal Code. Residents of this structure will share common facilities and living areas and household duties. Residents living together in the number and manner proposed for this facility could be considered a single-housekeeping unit even if the residents had no disability.

Factor 7: Whether the requested accommodation would impose an undue financial or administrative burden on the City.

The appellant has not identified an issue with regards to this consideration. Staff's review of this proposal has identified no evidence that the requested accommodation would impose an undue financial or administrative burden on the City.

Factor 8: Whether the requested accommodation would require a fundamental alteration in the nature of a City program.

The requested Reasonable Accommodation for 12 total residents will not require a fundamental alteration in the nature of a City program, will not violate either the Housing or Building Codes, will not require the modification of the existing structure and will provide parking sufficient for the requested residents given the restriction on the number who will be allowed to drive.

CONCLUSION

Requests for Reasonable Accommodation, such as this one, can result in significant neighborhood concern. Because the proposed occupancy is a legitimately-identified protected class of "disabled" individuals as defined by the Federal and State Fair Housing Acts, the City has limited ability to condition the granting of such requests, and cannot always respond fully to neighborhood concerns. The City cannot deny a request for Reasonable Accommodation based on the concerns of a neighborhood about the potential "undesirable" nature or characteristics of prospective future occupants. The City's research has confirmed that the Housing and Building Codes are properly met through this proposal with regards to the safe, maximum occupancy of a structure. As the facility is not currently in operation, there can be no initial concern regarding a "track record." The City may provide for reasonable safeguards to protect the surrounding residents from physical impacts such as excessive parking in the neighborhood as done with the limitation agreed to by the applicant on future drivers at this facility. The appellant has not provided any evidence that would indicate that the potential impacts of the proposed Request for Reasonable Accommodation are such that it would change the existing single-family neighborhood.

COORDINATION

Preparation of this staff report was coordinated with the City Attorney's Office, Code Enforcement Division, Building Division, Police Department and the Santa Clara County District Attorney's Office.

RECOMMENDATION

Planning Staff recommends that the Planning Commission uphold the Director's Final Determination and grant the Reasonable Accommodation Request for a Sober Living Environment to operate as described in the application for a total of 12 residents, comprised of ten (11) residents and one (1) live-in resident staff. Of the said residents, no more than five (5) shall be licensed drivers allowed to keep vehicles at the site.

FINDINGS

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. The proposed site is located in the R-1-8 Residential Zoning District.
2. This site has a designation of Medium Low Density Residential (8 DU/AC) on the adopted San Jose 2020 General Plan Land Use/Transportation Diagram.
3. The subject site is developed with one single-family detached dwelling unit.
4. The subject site is used for residential purposes.
5. The subject site is approximately 5,663 square feet in area.
6. The persons on whose behalf the application is being heard are considered disabled under the Fair Housing Act.
7. The applicant has requested the following accommodation to a code, policy or practice of the City of San Jose: Non single-family use in an R-1-8 Residential Zone: Sober Living Environment (SLE) for (12) twelve residents, including (11) ten residents and (1) one resident staff member.
8. The residence is a two-story structure and consists of four bedrooms and two bathrooms. The size and the physical configuration of the residence can accommodate 12 residents.
9. A maximum of 12 residents can be accommodated in this structure in conformance with the Housing Code.
10. As represented in the floor plans submitted with the application, none of the common areas of this residence (e.g., living room, dining room, and kitchen) have been converted to bedrooms. The common areas are sufficient to accommodate a use for twelve (12) total residents.
11. As represented in the floor plans dated July 30, 2003, the facility can accommodate parking for up to five (5) cars by using the garage for two (2) cars and the driveway apron for parking (2) cars and one (1) car along the curb in front of the proposed residence. The parking appears to be sufficient for 12 residents under the applicable guidelines, assuming that the resident manager has a driver's license,

and based on the fact that no more four (4) of the remaining residents will have a driver's license and be allowed to keep vehicles at the site.

12. The site is surrounded by single-family detached residential uses.
13. General Plan Policy specifies that residential social service programs should not be concentrated in a few areas, but should be distributed throughout the City. This area does not currently have an over-concentration of facilities of residential care homes.
14. The request is exempt pursuant to the California Environmental Quality Act (CEQA) Guidelines.
15. The persons on whose behalf the application is being heard are considered disabled under the Fair Housing Act.
16. Appellants presented no substantiated evidence to show potential impact on surrounding uses.

The Planning Commission based on the factual findings above, concludes the following,

1. The requested accommodation will not impose an undue financial or administrative burden on the City.
2. Preservation of the single-family character of the zoning district of the subject property is a legitimate fundamental City interest.
3. The interior and exterior characteristics of the subject property, as well as the location of the property within the neighborhood and access to transportation and other services, are adequate to accommodate the alternative accommodation consistent with the single family character of the neighborhood.
4. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas.
5. The requested accommodation granted for twelve (12) total occupants will not require a fundamental alteration in the nature of a City program.

Determination of Reasonableness

The focus of this Reasonable Accommodation request is an objective analysis of the impacts associated with an increase in the total number of twelve (12) residents.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/

Transportation Diagram of the City of San José.

2. The proposed project complies with all applicable provisions of the Zoning Ordinance
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed request complies with Guidelines for Evaluating Requests for Reasonable Accommodation.

Finally, based upon the above-stated findings, the Planning Commission concludes the following:

1. The requested Accommodation will not impose an undue financial or administrative burden on the City.
2. Preservation of the single-family character of the zoning district of the subject property is a legitimate fundamental City interest.
3. The interior and exterior characteristics of the subject property, as well as the location of the property within the neighborhood and access to transportation and other services, are adequate to provide for the requested Reasonable Accommodation consistently with the single-family character of the neighborhood.
4. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas.
5. The requested accommodation granted for twelve (12) total occupants will not require a fundamental alteration in the nature of a City program.

cc: Santa Clara District Attorney, Attn: Jodie Thomas, Bureau of Investigation, 70 West Hedding Street, West Wing, San Jose, CA 95110